IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1841 OF 2004.

Shri Deepak Shankar Patil age 33 yrs., residing at Room No.42, 2nd floor, Press Building, Dargah Galli, Darukhana, Sewree, Mumbai 400 010. .... Petitioner

Versus.

1. Shri A.N.Roy Commissioner of Police, Brihan Mumbai.

2. The State of Maharashtra.

3. Superintendent, Nashik Road, Central Prison, Nashik. .... Respondents

Shri U.N.Tripathi for the Petitioner.

Smt.U.V.Kejriwal, A.P.P.for the Respondents.

CORAM ; SMT.RANJANA DESAI, & ABHAY S. OKA, JJ.

DATED : 17th December, 2004.

ORAL JUDGMENT (Per Smt.Ranjana Desai, J.)

1. The petitioner (hereinafter referred to as "the detenu") is detained by the Commissioner of Police, Mumbai under an order of detention dated 30 April 2004 issued under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act,

1981 ("the said Act" for short), with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. In this petition, the detenue has challenged the said order of detention.

2. The order of detention is based on one C.R. being C.R.20 of 2004 and two in-camera statements of witnesses "A" and "B" recorded on 16 March 2004 and 19 March 2004.

3. Shri Tripathi, the learned Counsel appearing for the petitioner has assailed the impugned order on three grounds. He firstly contended that the grounds of detention do not indicate that the detenu's activities have posed a threat to the maintenance of public order. He submitted that C.R.12 of 2004 refers to an incident which had taken place in a hotel. It cannot be said that the said incident which had taken place in a hotel room could have affected the public order. Shri Tripathi also contended that the in-camera statements also are stereotype and do not inspire confidence. He submitted that The detention order could not have been based on the in-camera statements.

4. We are unable to agree with the learned Counsel. The incident in respect of which C.R.12 of 2004 is registered has taken place on 16 January 2004. On that

day Kamlesh Udaypratap Singh went to attend to his hotel business at Hotel Shiv Mahal situated at Darukhana, Sewree at 20.30 hours. After mid-night on 17 January 2004 he was standing at STD booth of Ramesh in front of the Hotel Shiv Mahal. At that time the watchman of the hotel Shri Jagdish Dubey and one Anand Ghadge were performing their duty at the gate of the said hotel. The detenu and his associate Pappu Khan went there and threatened Kamlesh. They asked him to close down the hotel immediately. When Kamlesh pleaded with the detenu and his associate not to disturb his business, the detenu threatened him and told him that if he wanted to conduct his business, he would have to give him Rs.50,000/- as hafta. Kamlesh expressed his helplessness and said that he cannot give so much amount. The detenue and his associate were annoyed by that reply. They climbed the staircase of the hotel and barged into the dancing hall on the first floor. Kamlesh followed the detenu. In the hall the detenue and his associate started abusing and threatening the customers and sending them out of hotel. Kamlesh and others requested the detenu and his associate not to behave in such a manner but the detenu and his associate abused, fisted and pulled them away. Due to the fear the customers in the dancing hall rushed down. The detenu and his associate abused the dancing girls. The

detenu also fisted and pulled a dancing girl by name Ranjita, due to which she collapsed on the floor. Out of fear the other dancing girls left the hall and went to hide in the dressing room. The hotel thereafter bore a deserted look. The detenu and his associate left the place and while leaving threatened Kamlesh that if he wanted to continue the hotel business, he must give him Rs.50,000/- per month, otherwise he would be killed. Kamlesh was scared. He did not go to the Police Station to lodge his complaint immediately. After mustering courage he went to Sewree Police Station on the next day and lodged his complaint. We have no manner of doubt that this incident had affected the public order. The facts narrated above clearly indicate that the customers were sitting in the hotel. The dancing girls were performing on the stage. The customers were driven out of the hotel by the detenu and his associate by giving them threats. Hafta was demanded. This incident certainly affects public order.

5. In our opinion, the two in-camera statements of witnesses "A" and "B" also indicate that the detenu is indulging in activities which disturb the public order. Both the incidents pertain to the activities of the detenue of demanding hafta by threatening shopkeepers. We are therefore of the opinion that Shri Tripathi’s

submission that the grounds of detention do not disclose that on account detenu's activities public order was disturbed must be rejected and is rejected as such.

6. Shri Tripathi then drew our attention to the bail order passed by the Metropolitan Magistrate, 13th Court, in C.R.No.12 of 2004. In that order the learned Magistrate has observed that the remand papers at this stage do not disclose the name of the person in whose presence the amount was demanded. Shri Tripathi therefore contended that the detenu was released on bail because there is nothing to indicate in whose presence the money was demanded by the detenu in Hotel Shiv Mahal. Shri Tripathi therefore submitted that there is no evidence to establish that the detenu demanded the money. We are unable to appreciate this submission. The detaining authority has in his affidavit stated that the witness Ramesh Sidaya Paruka has in his statement stated that the detenu had demanded hafta money of Rs.25,000/- from the complainant and the said papers form part of the material placed before the detaining authority and supplied to the detenu. We feel that the detaining authority is right in observing that the learned Magistrate has erred in concluding that the name of the person in whose presence demand was made has not been disclosed in the investigation papers. This

submission of Shri Tripathi will therefore have to be rejected.

7. Lastly Shri Tripathi contended that the detenu does not have any antecedents. The detaining authority has in the grounds stated that the confidential enquiries were made about the activities of the detenu in the areas of Darukhana and adjoining areas in Sewree and it was found that number of people were victimised by the detenu and his associate in the recent past. However, nobody from the area was ready to make statement openly against the detenu due to fear of retaliation. In the affidavit-in-reply, the detaining authority has stated that even though the detenu has committed several offences, the witnesses were not coming forward to make any complaint openly against the detenu due to reign of terror created by the detenu and his associates. We have no reason to disbelieve the detaining authority. In the ultimate analysis, therefore,we hold that the detenu has become a menace to the society and his activities have affected the public order. The order of detention is perfectly legal and justified and hence the petition is dismissed.

(Smt.Ranjana Desai, J.)

(Abbay S.Oka, J.)